2004

State of Utah v. Genaro Pantoja Corvera : Reply Brief

Utah Court of Appeals

Mark L. Shurtleff; Utah Attorney General; Kris C. Leonard; Assistant Attorney General; Criminal Appeals Division; Attorneys for Appellee.
Scott L. Wiggins; Arnold & Wiggins, PC; Attorneys for Appellant.

IN UTAH COURT OF APPEALS

STATE OF UTAH, Plaintiff / Appellee, v. GENARO PANTOJA CORVERA, Defendant / Appellant.	)))))))))	Case No. 20040918-CA ***** **ORAL ARGUMENT** **AND** **PUBLISHED OPINION REQUESTED** *****

REPLY BRIEF OF APPELLANT

Appeal from Order Denying Defendant's Motion for New Trial, which was entered on September 27, 2004, in the Second District Court, Davis County, the Honorable Thomas L. Kay, presiding.

SCOTT L WIGGINS (5820)
ARNOLD & WIGGINS, P.C.
American Plaza II, Suite 105
57 West 200 South
Salt Lake City, UT 84101
Attorneys for Appellant

MARK L. SHURTLEFF
UTAH ATTORNEY GENERAL
KRIS C. LEONARD
ASSISTANT ATTORNEY GENERAL
CRIMINAL APPEALS DIVISION
160 East 300 South, 6th Floor
P.O. Box 140854
Salt Lake City, UT 84114-0854
Attorneys for Appellee

IN UTAH COURT OF APPEALS

STATE OF UTAH, Plaintiff / Appellee, v. GENARO PANTOJA CORVERA, Defendant / Appellant.	)	Case No. 20040918-CA ***** **ORAL ARGUMENT** **AND** **PUBLISHED OPINION REQUESTED** *****

REPLY BRIEF OF APPELLANT

Appeal from Order Denying Defendant's Motion for New Trial, which was entered on September 27, 2004, in the Second District Court, Davis County, the Honorable Thomas L. Kay, presiding.

SCOTT L WIGGINS (5820)
ARNOLD & WIGGINS, P.C.
American Plaza II, Suite 105
57 West 200 South
Salt Lake City, UT 84101
Attorneys for Appellant

MARK L. SHURTLEFF
UTAH ATTORNEY GENERAL
KRIS C. LEONARD
ASSISTANT ATTORNEY GENERAL
CRIMINAL APPEALS DIVISION
160 East 300 South, 6th Floor
P.O. Box 140854
Salt Lake City, UT 84114-0854
Attorneys for Appellee

TABLE OF CONTENTS

No Addendum is necessary pursuant to Utah Rule of Appellate Procedure 24(a)(11).

TABLE OF AUTHORITIES
CASES CITED

Page(s)

Federal Cases

State Cases

STATUTES CITED

None.

RULES CITED

CONSTITUTIONAL PROVISIONS CITED

DETERMINATIVE AUTHORITY

ARGUMENTS

I. MR. CORVERA'S ARGUMENTS ON APPEAL NOT ONLY CONSTITUTE ADEQUATE BRIEFING BUT THEY CONSTITUTE MEANINGFUL ARGUMENTS FOR THE GOOD FAITH APPLICATION AND EXTENSION OF EXISTING CONSTITUTIONAL CASE LAW.

At the outset, the State argues that "[t]his Court should decline to address defendant's appellate argument because it is inadequately briefed." *See* State's Brief of Appellee, p. 9. Utah Rule of Appellate Procedure 24(a)(9) provides, in relevant part, that "[t]he argument [set forth in a Brief] shall contain the contentions and reasons of the appellant with respect to the issues presented, including the grounds for reviewing any issue not preserved in the trial court, with citations to the authorities, statutes, and parts of the record relied on."

Based on a plain and simple reading of the aforementioned rule, Mr. Corvera's arguments on appeal pass muster of the inadequate-briefing standard specifically set forth in that rule. First, the arguments of Mr. Corvera are abundantly supported by various citations to authorities that include not only applicable cases from the United States Supreme Court but those of the Utah Supreme Court. *See* Brief of Appellant, pp. 7-10. Moreover, Mr. Corvera's Brief of Appellant not only includes numerous citations to the record on appeal but it includes various addendums that include date-stamped documents from the record on appeal,

including the trial court's one-page Order denying the subject Motion for a New Trial. *See id.* at pp. 4-6, Addendums A, B, & C.

Contrary to the State's assertion, the legal authority cited by Mr. Corvera in the Brief of Appellant is both relevant and applicable to the instant case. Moreover, this case, contrary again to the State's claim, involves a deliberate procedure and practice by the trial court to move forward with the interpreter even after the foreperson, in the midst of trial, alerted the trial court to translation problems dealing with the word "knife." *See* R. 148:3-9.

II. CONTRARY TO THE STATE'S ASSERTION, THE COURT FAILED TO UTILIZE THE CORRECT STANDARD IN THE COURSE OF REVIEWING AND DENYING MR. CORVERA'S MOTION FOR A NEW TRIAL.

The State argues that Mr. Corvera "bore the burden below of establishing his claim that he was denied a fair trial." *See* State's Brief of Appellee, p. 13. This is not at issue in the instant appeal. *See State v. Jarrett*, 112 Utah 335, 187 P.2d 547, 551 (1947); *accord State v. Boone*, 820 P.2d 930, 932 (Utah Ct. App. 1991).

Notwithstanding the State's argument concerning a sufficiency of the evidence, the issue in the instant appeal is the standard utilized by the trial court in the course of reviewing and denying Mr. Corvera's Motion for a New Trial. While there is a certain

amount of discretion imparted to the trial court's review of a Motion for a New Trial, the trial court must apply the appropriate standard in the course of doing so. *See State v. Bisner*, 2001 UT 99, ¶31, 37 P.3d 1073. To ensure that the appropriate standard is utilized by the trial court, the appellate court "review[s] the legal standards applied by the trial court in denying such a motion for correctness." *Id.* This means that no deference is given to the trial court's determination of the standard to be utilized in denying a motion for a new trial. *Id.* Moreover, especially close judicial scrutiny is applied to a review of the trial court's decision if the trial court's decision implicates a fundamental constitutional right. *See State v. Daniels*, 2002 UT 2, ¶15, 40 P.3d 611 (citing *Estelle v. Williams*, 425 U.S. 501, 503, 96 S.Ct. 1691 (1976)).

This case involves the fundamental constitutional right to a fair trial, which is guaranteed by both the Sixth and Fourteenth Amendments to the United States Constitution. *See, e.g., Holbrook v. Flynn*, 475 U.S. 560, 567, 106 S.Ct. 1340, 1345 (1986); *Estelle v. Williams*, 425 U.S. 501, 503, 96 S.Ct. 1691, 1692 (1976). While the presumption of innocence is not specifically articulated in the Constitution, it is a basic component of the right to a fair trial under our system of justice. *Estelle*, 425 U.S. at 503; 96 S.Ct. at 1692. The United States Supreme Court long ago addressed

this by stating: "The principle that there is a presumption of innocence in favor of the accused is the undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law." *Coffin v. United States*, 156 U.S. 432, 453, 15 S.Ct. 394, 403 (1895).[1]

"To implement the presumption [of innocence], courts must be alert to factors that may undermine the fairness of the fact-finding process." *Estelle*, 425 U.S. at 503; 96 S.Ct. at 1693. "In the administration of criminal justice, courts must carefully guard against dilution of the principle that guilt is to be established by probative evidence and beyond a reasonable doubt." *In re Winship*, 397 U.S. 358, 364, 90 S.Ct. 1068, 1072 (1970).

In *Estelle*, the United States Supreme Court further noted that "[t]he actual impact of a particular practice on the judgment of jurors cannot always be fully determined. But this Court has left no doubt that the probability of deleterious effects on fundamental rights calls for close judicial scrutiny." *Estelle*, 425 U.S. at 504; 96 S.Ct. at 1693 (citing *Estes v. Texas*, 381 U.S. 532, 85 S.Ct. 1628 (1965); *In re Murchison*, 349 U.S. 133, 75 S.Ct.

---

[1]"Central to the right to a fair trial . . .is the principle that 'one accused of a crime is entitled to have his guilt or innocence determined solely on the basis of the evidence introduced at trial, and not on grounds of . . . other circumstances not adduced as proof at trial.'" *See Holbrook*, 475 U.S. at 567, 106 S.Ct. at 1345 (quoting *Taylor v. Kentucky*, 436 U.S. 478, 485, 98 S.Ct. 1930 (1978));

623 (1955)); *see also State v. Daniels*, 2002 UT 2, ¶¶15, 19, 40 P.3d 611.

In the instant case, during her testimony through an interpreter the first day of trial, Mr. Corvera's spouse acknowledged that he had waived around, in a threatening manner, what appeared to be either a knife or the sheath of a knife. *See* R. 147:169:7-21. In addition, Officer Phillip Rogish, the lead investigator, testified that Mr. Corvera's spouse, through an interpreter, informed him that Mr. Corvera had waived a knife at her and threatened her shortly after the alleged incident of sexual abuse. *See id.* at R. 147:176-77.

At the beginning of the second day of trial, the Bailiff informed the trial court that one of the jurors had requested an audience with the court. *See id.* at R. 148:3:8-13. Appearing alone before the trial court and counsel, the juror informed the trial court that, according to his knowledge of the Spanish language, the translator during the first day of trial had difficulty communicating the concept of "pocket knife" to Mr. Corvera's spouse. *See id.* at R. 148:6-8. The trial court told the juror "not to bring it up, you know, to the others" and to rely on the record for interpretation purposes. *See id.* at R. 148:8:19-22. After the juror had left the courtroom, the trial court failed to require the court reporter to record the Spanish

words for "knife" referenced by the juror. *See id.* at R. 148:9:2-6.

During the second day of trial, Mr. Corvera also testified through an interpreter. *See id.* at R. 148:69:4-5. Through that interpreter, Mr. Corvera unequivocally denied both the charge and the underlying allegations supporting the charge. *See id.* at R. 148:101-02. The jury subsequently convicted Mr. Corvera as charged. *See id.* at R. 148:181:15-19.

Following the trial, appointed trial counsel, together with the prosecutor, spoke with seven or eight of the jurors. *See id.* at R. 102. During that discussion, the jury foreperson indicated that the verdict "had boiled down to the victim's word versus the defendant's word . . . ." *See id.* at R. 103. The foreperson stated further that while he was able to understand Mr. Corvera's testimony, because he speaks Spanish, many of the other jurors mentioned during deliberations that they had been unable to hear the interpreter when she spoke on behalf of Mr. Corvera during his testimony. *See id.* at R. 103. As a result, they "missed half of it . . . ." *See id.* at R. 103.

Thereafter, Mr. Corvera's appointed trial counsel filed a Motion for New Trial accompanied by the Affidavit of appointed trial counsel. *See id.* at R. 100; R. 101-04. About ten months

later, the State filed an opposition to the Motion for a New Trial.

After argument, the trial court summarily denied the Motion. *See id.* at R. 124. The trial court issued an Order denying the Motion, stating one, that "[t]here was insufficient evidence or information to find that the defendant's right to a fair trial was prejudiced in any way in relation to the translation or translators in this case", and two, that "[s]pecifically, there is no evidence that the jury was prejudiced in any way in relation to the translation of the word knife or in relation to the speaking volume of the translators." *See id.* at R. 125-26.

The trial court failed to apply the requisite close judicial scrutiny to the alleged violation of Mr. Corvera's right to a fair trial. Instead, the trial court merely concluded that there was "insufficient evidence or information to find that the defendant's right to a fair trial was prejudiced . . . ." *See id.* at R. 125. In fact, the trial court concluded that there was *no evidence* of prejudice. *See id.*.

Based at least, in part, on the Affidavit of Mr. Corvera's own appointed trial counsel, the presentation of the evidence during the Defendant's trial in-chief was at least significantly hampered, if not prejudiced, by the interpreter's failure to effectively communicate testimony of Mr. Corvera, as the accused,

as well as that of his wife, to the jurors during the course of trial. By failing to effectively communicate critical defense testimony to the jury, the circumstances surrounding Mr. Corvera's trial essentially constituted the lack of an interpreter, which resulted in Mr. Corvera's guilt being determined almost exclusively pursuant to the victim's testimony. *Cf. State v. Vasquez*, 101 Utah 444, 121 P.2d 903, 906 (1942) (holding that it is better, in a questionable case, to err on the side of providing an interpreter -- reversible error when defendant's presentation thereby hampered).

Not only did the interpreter's failure to effectively communicate with the jury constitute an inherently prejudicial courtroom action or arrangement to the detriment of Mr. Corvera, it also constituted an unacceptable risk that impermissibly eroded the presumption of innocence to which Mr. Corvera was entitled at trial. *See Daniels*, 2002 UT 2 at ¶20 (citing *State v. Harrison*, 2001 UT 33, ¶6, 24 P.3d 939 (internal citations omitted)).

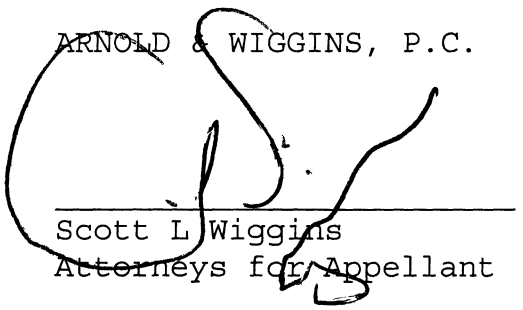
CONCLUSION

Based on the foregoing, Mr. Corvera respectfully requests that this Court grant his Petition for Rehearing and reverse his conviction, remanding the case to the district court for further

proceedings consistent with this Court's instructions as set forth in its opinion.

RESPECTFULLY SUBMITTED this 5th day of December, 2005.

ARNOLD & WIGGINS, P.C.

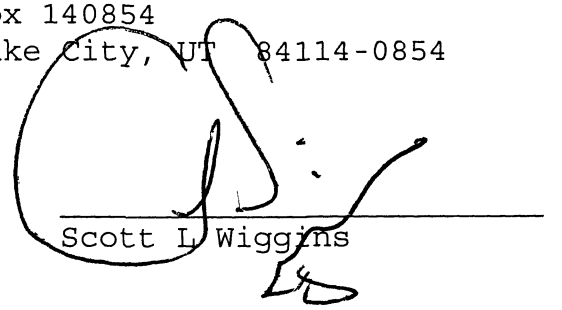


Scott L. Wiggins
Attorneys for Appellant

CERTIFICATE OF SERVICE

I, SCOTT L WIGGINS, hereby certify that I personally caused to be mailed by First-Class Mail, postage prepaid, two (2) true and correct copies of the foregoing **REPLY BRIEF OF APPELLANT** to the following on this 5th day of December, 2005:

Ms. Kris C. Leonard
Assistant Attorney General
160 East 300 South, 6th Floor
P.O. Box 140854
Salt Lake City, UT 84114-0854



Scott L Wiggins

ADDENDA

No Addendum is necessary pursuant to Utah Rule of Appellate Procedure 24(a)(11).